

BILL # SB 1376

TITLE: capital case litigation; public defender

SPONSOR: Huppenthal

STATUS: As Introduced

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FISCAL ANALYSIS

Description

SB 1376 would create a new State Capital Post-Conviction Public Defender Office to be established January 1, 2007. All capital convictions are automatically appealed to the state Supreme Court and this new office, to be funded by the state, would represent defendants during the direct appeal phase, also known as the post-conviction relief (PCR) proceeding. Currently, the counties provide defense for PCR cases and receive a 50% reimbursement from the state. SB 1376 would eliminate the counties' current role in these proceedings and shift the full cost burden to the state.

Estimated Impact

The bill is estimated to have a net cost to the state of \$278,700 in FY 2007 and \$472,600 in FY 2008.

The estimated cost of State Capital Post-Conviction Public Defender Office is \$444,200 in FY 2007, which is a half-year cost; and beginning in FY 2008, the estimated full-year, ongoing cost would be \$803,600.

The new office cost would be offset by the savings from eliminating the current program, which requires the state to reimburse 50% of county costs for PCR cases. The savings would be \$165,500 in FY 2007 and \$331,000 in FY 2008.

Analysis

As the result of the U.S. Supreme Court ruling in *Ring v. Arizona*, which declared death sentences imposed by a judge to be unconstitutional, the number of cases filed annually since FY 2000 dropped significantly pending resentencing of death penalty cases, thus not requiring Post-Conviction Relief Proceedings. The lawsuit was brought before the Supreme Court in 2000. By mid-year FY 2007, the number of new case filings are expected to return to caseload levels seen prior to *Ring v. Arizona*.

From FY 1997 to FY 1999, there was an average of 8 new case filings per year, with the average direct appeal requiring 2 years to complete. This information would indicate that each year, 16 PCR cases would be in the appeals process with an estimated 90% of an attorney's workload for direct appeals occurring in the first year. Each of the PCR appeals cases typically requires 250 to 1,000 hours of an attorney's time or an average of 650 hours per case. If an attorney has approximately 1,880 work hours available per year, each attorney could handle up to 3 cases per year. Based on this information, the State Capital Post-Conviction Public Defender Office would need 3 attorneys on staff to provide duties outlined in SB 1376. These attorneys would be supported by an investigator, a paralegal assistant, and a secretary. The office would also need an administrative assistant and the office would be supervised by the State Capital Post-Conviction Public Defender. SB 1376 sets the Public Defender's salary at the same amount as the existing Chief Counsel of the Capital Litigation Section at the Attorney General's Office, which is currently \$107,420. The Other Operating Expenditures include \$9,000 for Professional and Outside Services for each case (transcripts, witnesses, etc.), \$900 for travel for each attorney, \$2,000 for miscellaneous expenses for each employee, and office rent. The one-time expenses include computers, desks, and other office equipment. The line item detail of the office's budget is as follows:

	<u>FY 2007</u>	<u>FY 2008</u>
FTE Positions	4.0	8.0
Personal Services	\$261,600	\$523,200
Employee Related Expenditures	78,900	157,800
Other Operating Expenditures	<u>61,300</u>	<u>122,600</u>
Total Annual Expenditures	\$401,800	\$803,600
Equipment (one-time costs)	<u>42,400</u>	<u>0</u>
Total Fiscal Year Costs	\$444,200	\$803,600

These estimates assume that the new office would have a full load of 8 new cases upon its inception. The actual workload and caseload could be significantly different, however. First, for simplicity, these estimates assign all case-related hours to a 1-year period. In actuality, cases will take more than 1 year to appeal. If so, the total number of hours per case would be spread over several years, and the number of hours needed from the new office would be fewer in its first few years than predicted in this analysis. Later, if multi-year cases were to accumulate, the number of work hours per year could be higher than the annual cost estimate. Second, it is unknown whether all existing appeals cases would be transferred to the State Capital Post-Conviction Public Defender upon that office's creation. This estimate assumes that only new cases would be handled by the new office, so that if existing cases were transferred and there were a full workload of new cases, costs would be higher than this estimate.

Local Government Impact

Starting in FY 2007, when the State Capital Post-Conviction Public Defender Office would begin to handle PCR cases, the counties would no longer be responsible for these cases. The state reimburses 50% of the costs for Post-Conviction Relief (PCR) cases under current statute, which would be the avoided costs to counties in future years. Avoided costs are estimated to be at \$165,500 in the FY 2007 and \$331,000 beginning in FY 2008. This assumes that county public defender and legal defender offices currently devote the equivalent of 3 attorneys, 1 paralegal assistant, 1 investigator, 1 secretary, 1 administrative assistant, and related expenses to these capital appeals. The counties would be able to redirect these staff or the related resources to other cases.

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